

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

United States of America	)	
	)	
Plaintiff,	)	Case No. 1:04-CR-23
	)	
vs.	)	
	)	
LaShawn Pettus-Brown,	)	
	)	
Defendant.	)	

O R D E R

This matter is before the Court on the government's motion to reconsider order granting acquittal (Doc. No. 72). For the reasons set forth below, the government's motion is not well-taken and is **DENIED**.

As the Court recounted in its earlier order (Doc. No. 71), the grand jury charged Defendant LaShawn Pettus-Brown with two counts of theft concerning a program receiving federal funds, in violation of 18 U.S.C. § 666, three counts of wire fraud, in violation of 18 U.S.C. § 1343, and three counts of money laundering, in violation of 18 U.S.C. § 1956. The charges arose out of a fraudulent proposal the Defendant submitted to the City of Cincinnati to renovate the Empire Theatre. The Defendant obtained money from the City by presenting false claim vouchers for payment for work supposedly done on the theatre. The Defendant used the money advanced by the City for his own personal purposes, including promoting a concert by hip-hop

performer Ja Rule. Prior to trial, the government dismissed the theft charges and the case went forward on the wire fraud and money laundering counts.

At the close of the government's case-in-chief, the Defendant made a timely motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The Defendant's theory of acquittal was that the fraud was complete once he obtained the funds from the City with the first fraudulent voucher and, therefore, the three wire transfers, which occurred after the disbursement of the funds and which were the basis for the wire fraud charges, were not executed in furtherance of the fraud. Defendant then moved for acquittal on the money laundering counts on the grounds that acquittal on the wire fraud charges meant that there was no laundering of the proceeds of the specified unlawful activity, which was alleged to be wire fraud. The Court took Defendant's motion under submission at trial and directed the parties to file post-trial briefs on the issues raised in the motion. The jury eventually returned guilty verdicts on all six counts.

Defendant's post-trial brief essentially reiterated the points of his oral motion. The government proffered a limited response to Defendant's contention that the wire transfers were not in furtherance of the fraud. The government first argued that the Defendant's fraud was not complete until he ultimately

spent the money on purposes not approved under his loan agreement with the City. Therefore, the government argued, the wire transfers were a "step in the plot" of misusing the money. Second, the government argued that the relevant question is whether the wire transfer was a part of the execution of the fraud as the defendant conceived it at the time, and, if so, the wire transfer was in furtherance of the fraud. Thus, in light of that contention, the government argued that the wire transfers were in furtherance of the scheme to defraud because the timing of the first wire transfer showed that the Defendant intended all along to wire the money once he obtained it from the City.

The Court agreed with the Defendant that the evidence, even when viewed in the light most favorable to the government, did not support a finding beyond a reasonable doubt that the wire transfers at issue were made in furtherance of the scheme to defraud. The Court observed that the wire transfers did not facilitate or make easier the continuation of the fraud, they did not help conceal the fraud from the City, nor did they lull the City into a false sense of security regarding the fraud. The wire transfers were, the Court held, simply the mechanism through which the Defendant spent or disbursed the stolen money and, consequently did not further the scheme to defraud. A contrary holding, the Court stated, would result in the federalizing of a broad range of state law fraud offenses because the ultimate

misuse of funds is the essence of all frauds. The Court thus rejected the government's contention that the fraud was not complete until the Defendant spent the money on unapproved purposes. The Court additionally rejected the government's contention that viewing the scheme as the Defendant conceived it showed that the wire transfers were in furtherance of the fraud. The Court first noted that the cite relied on by the government was taken out of context - the real point of the case cited was that it was immaterial if the wire fraud backfired on the defendant and actually revealed the fraud. In any event, the Court stated, even though the scheme must be examined as the perpetrator conceived it, in order to sustain a conviction for wire fraud, the evidence must show that the wire transfer assisted in the completion or prevention of detection of the scheme. The Court repeated, however, that the wire transfers at issue were inconsequential to the ultimate consummation of the scheme.

In light of that analysis, the Court entered judgment of acquittal on the wire fraud charges. As a result of that decision, the Court necessarily concluded that the evidence did not support a conviction on the money laundering counts because the alleged laundering did not involve the proceeds of wire fraud. Therefore, the Court entered judgment of acquittal on all of the charges and ordered that the Defendant be released from

pretrial detention.

The government now moves the Court to reconsider its decision granting Defendant's motion for judgment of acquittal. In its motion, the government proffers a more detailed and elaborate theory on the manner in which the jury could have found that the wire transfers at issue furthered the scheme to defraud. The government now argues for the first time that in order to carry out his scheme, the Defendant needed to create an image of a successful businessman and that his lavish personal expenditures of the stolen funds furthered that image. Therefore, the government contends, the wire transfers executed by the Defendant for personal expenses were incident to and furthered the scheme to defraud by bolstering the facade of a successful businessman. The government also argues that the success of the Ja Rule concert was crucial so that the Defendant could generate profits to obtain the personal equity stake in the renovation project that he had already falsely represented to the City he possessed. The government further argues that the Defendant needed profits from the Ja Rule concert in order to funnel money back into the renovation project so that he could prevent detection of the scheme. Therefore, the government argues, the wire transfers the Defendant executed to promote the Ja Rule concert were incident to the scheme to defraud the City.

The Court notes that the arguments advanced by the

government in its motion for reconsideration are being proffered for the first time. As indicated above, in its brief in response to Defendant's motion for judgment of acquittal, the government argued only that the wire transfers were incident to the scheme to defraud because the fraud was not complete until the Defendant ultimately spent the money for purposes not approved by his agreement with the City and/or that he intended from the outset of the scheme to execute wire transfers. The government did not at that time contend that the wires helped the Defendant maintain a front as a successful businessman nor did it contend that the Defendant needed the proceeds from the Ja Rule concert to prevent detection of the scheme. The government candidly admits that it failed to "articulate completely in its previous brief the scope of the fraud scheme and how the wire transactions in this case furthered that scheme." Doc. No. 73, at 13.

Neither the federal criminal rules nor the federal civil rules provide for a motion for reconsideration. United States v. Capps, No. 86-5186, 1986 WL 18426, at \*\*1 (6th Cir. Nov. 12, 1986). Nevertheless, courts will entertain a motion for reconsideration where the movant demonstrates that "the Court has overlooked controlling decisions or factual matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." Range Road Music, Inc. v. Music Sales Corp., 90 F.

Supp.2d 390, 392 (S.D.N.Y. 2000) (emphasis in original).

However, a motion for reconsideration should not be used to raise arguments which should have and could have been advanced before judgment has been issued. Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998) (construing Federal Rule of Civil Procedure 59).<sup>1</sup>

Viewed in light of the above standard, the government's motion for reconsideration is clearly improper because it advances arguments and theories of the case which could have, but were not, presented in the original round of briefing on Defendant's motion for judgment of acquittal. Although on a motion for judgment of acquittal the Court is required to review the record in the light most favorable to the jury's verdict, it is not the Court's duty or burden, insofar as it can tell, to review the record in light of theories of the case not advanced by the government. Nor is it the Court's duty to develop theories of the evidence on the government's behalf. The Court's decision to enter judgment of acquittal was based on the case law and evidence cited by the parties in the original briefs. The government's present motion does not explain why the Court's decision was incorrect in light of the evidence and authorities

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<sup>1</sup> Although these are concepts which guide motions for reconsideration in civil cases, other courts have applied these principles in deciding motions for reconsideration in criminal matters. See, e.g., United States v. Demosthene, 326 F. Supp.2d 531, 533 n.2 (S.D.N.Y. 2004).

previously cited by the parties. Instead, having received the Court's thoughts on the matter, the government's motion, as it admits, attempts to amend the perceived flaws in its first brief. Therefore, the government's motion for reconsideration is improper. As another district court commented under similar circumstances:

The government's present constitutional argument may well have merit. But the fact remains that it was not raised before, and it would be exceptionally unfair to the defendant to allow the government, with the benefit of hindsight after having lost based on its original arguments, to use a motion for reconsideration to raise a new argument that should have been raised in the first instance.

United States v. Head, 737 F. Supp. 1287, 1288 (W.D.N.Y. 1990).

In any event, the Court notes that although the government presented evidence of the Defendant's expenditures of the City's money, there was no evidence that the Defendant spent the money as part of a pose to fool the City into believing that he was a successful businessman. Furthermore, although the government presented evidence of a fourth wire transfer, which it called "hush money" in its original brief, the wire transfer in question was in reference to the promotional money laundering charge, not the wire fraud charges. At trial, however, the government did not present any evidence or argument that the three wire transfers referenced in the wire fraud counts of the indictment prevented or were intend to prevent detection of the Defendant's fraudulent scheme. Accordingly, the Court is still



of the belief that the evidence presented at trial did not support a finding beyond a reasonable doubt that the wire transfers were incident to the Defendant's scheme to defraud.

The government's motion for reconsideration does not demonstrate that the Court's earlier order granting Defendant's judgment of acquittal was incorrect based on the authorities and evidence cited by the parties at that time. Instead, the government raises for the first time arguments that could have and should have been presented in its original brief. Accordingly, the government's motion for reconsideration is not well-taken and is **DENIED**. The Court will not entertain any further motions for reconsideration of the Defendant's motion for judgment of acquittal.

**IT IS SO ORDERED**

Date March 15, 2005

s/Sandra S. Beckwith  
Sandra S. Beckwith, Chief Judge  
United States District Court